

577 their sense of the personal injustice involved. But they do not reason
577 out these feelings; they follow them spontaneously, blindly.

There is a greater awareness of the social evil in adultery. But it is based not on the philosophical considerations of this harm in itself, but on the consequences of individual cases for the proper functioning of society -- palavers, financial difficulties, enmities, quarrels, wars.

This it seems to me is the present state of their ideas. It does not preclude the possibility that the law and sanctions against adultery may rest on an ultimate basis of moral ideas. And more particularly it is quite possible that the moral idea [321] operates only in the form of a feeling of the great principles of fundamental natural law which is innate to all human reason.

577 5) No one will be astonished if we say that colonization, far
577 from reducing the frequency of adultery, actually contributed to its considerable increase. The abolition of native penalties and punishments together with a great freedom of movement could not help but lead, naturally, to this state of affairs. Every informed colonial who is in close contact with the natives is aware of the situation. "The prohibition of corporal punishments which, according to custom, were the sanctions imposed against a woman's adultery have brought about a license whose extent can be measured by the degree to which a group is subject to our occupation. The forgetfulness if not the contempt for the promises of marriage is nowhere carried so far as in places where the customary disciplines have been completely removed." (344), Engels, Bulletin Soc. Belge, Et. Col., cited in Congo, 3rd year, Vol. 1, p. 77, April, 1922). That is why various persons have repeatedly called for sanctions against adultery to replace the ancestral means of repression that have been abolished.

• 672 But the decrees hoped for have never passed beyond the stage
177 of mere projects. Fortunately, another step, and a fundamental one,
577 has been taken in the meantime through the establishment of native jurisdiction (1936). Under the guidance and control of European authorities, native courts will turn the helm halfway back to the ancient sanctions, adapting these all the while to the new conditions created by colonization and by the introduction of more humanitarian

177 ideas. Nevertheless, great care must be exercised not to go to ex-
672 tremes in introducing these ideas to the point where a society only
71 just beginning to emerge from a pagan barbarism because of the
presence of a civilization based on Christianity, is treated as an
equal of European communities. Native society must evolve gradually
and harmoniously. Rushing is often synonymous with breaking, and
it is always a [332] great mistake. And in the matters under dis-
cussion, the abolition of sanctions which, in spite of their imperfec-
tion and their inadequacy for fulfilling the whole task, have been
shown to have a real efficacy, has removed all the coercive power of
Nkundu law. A sentimental and excessive humanitarianism must
yield before the native society's right to respect for its vital institu-
tions -- unless these are entirely to be condemned -- and therefore
before the necessity for severe punishments which it cannot do with-
out for the moment. For our natives are not yet ready for a complete
abolition of their customary sanctions, since they still lack a new
foundation that would replace their fear of the ancient penalties. Let
us therefore take care not to take all means of punishment away from
husbands and wives, even if they seem somewhat violent from our
viewpoint. Finally, there is no sense in overstressing a respect for
members of the weaker sex, who by their very nature sometimes
need punishment for the greater good of the whole community. More-
over, as for this respect, our Nkundu do not understand it at all; the
way we conceive of it is entirely opposed to their mentality and their
laws. Therefore, everything will work out more easily if the native
courts are given sufficient latitude to act in the spirit of their ancestral
law and if their activity is guided by a constant, informed, and
sympathetic control whose sole aim is the healthy evolution of native
society.

830 If it is applied within these limits and under these conditions,
Nkundu law can reform many wrongs and help to save native society
from the abyss into which it is in danger of falling. In spite of its
faults and imperfections, it is preferable not only to the system of
freedom (or license) which has reigned for many years, but also to

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● 692
178 In spite of the opposition of several old-fashioned chiefs, [388] the native courts that were recognized or established by the decree of 1926 have begun to make use of the powers the government has assigned to them. They are called upon to play a great role in setting matters right, especially if their work is closely supervised and regularly checked. To accomplish this end, these courts must continue to act in the spirit of the ancient laws, taking into account only the change in circumstances (1).

1. See Chapter VI, Article VII, 7.

586^A
118 The chief measure for the restoration of order advocated by the natives is the imprisonment of the wife who attempts a divorce. This practice would be a continuation of the custom of applying the etaka and an adaptation of it to present circumstances. Like the former practice, it would have a double effect: it would restrain flightiness and license, on the one hand, and, on the other, it would ensure the reimbursement of the bride price in cases where no reconciliation is possible. But its execution would be taken out of the husband's hands and handed over to the chief. Europeans who are in contact with the natives and concerned about the social order also favor this evolution of the common law.

Another way of combating such a situation would be the use of pressure against the guilty woman's parents, chiefly through the imprisonment of her mother. This measure has no basis in ancient law, except for war -- which did not touch the mother and actually was only moderately useful -- and the system of compensation (lowifia) -- which depended on the availability of opportunities and was used through the husband's own initiative. This practice therefore cannot be approved as such, but it might be acceptable in cases where the parents are really at fault. For instance, they may have in one way or another incited their daughter to break her marriage although she had no acceptable reason for doing so, or, although a legitimate declaration [389] of divorce has been made, they might refuse to make restitution of the bride price. (1) And

1. A drastic and indirect application